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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/859,528
Filing Date: March 19, 2001
Appellant(s): PASQUALI, SANDRO

Michael J Strauss
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/14/2008 appealing from the Office action mailed 10/4/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is mistitled. Appendix A, Page 24 lists the claims as being for Application 10/672,945. However, this

Application is 09/859,528. Hence, the Appendix A should be labeled for 09/859,528.

Regardless, the claims in Appendix A are the correct claims for 09/859,528.

(8) Evidence Relied Upon

Gerace 5,848,396 December, 1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 9-11, 23-25, 32, 34-38, 43, 45-49, 54, 56-60 are rejected under 35 U.S.C. 102(e) as being anticipated by Gerace (5,848,396).

Claim 9, 23, 32, 43, 54: Gerace discloses a window object, system, method manifested within a windows based content manifestation, environment provided within a web browser client, comprising:
a content manifestation area configured to dynamically manifest advertising content received from an advertising content source via an electronic data network (Fig. 2; Fig. 3a; col 2, lines 3-30).

Gerace further discloses a control facility configured to control display attributes associated with said content manifestation area (col 5, lines 15-25).

Gerace further discloses a server system configured to transmit a software system and data related to a content source via an electronic data network (col 5, lines 15-25) and a web browser client, receiving said software system (col 6, lines 15-21; col 1, lines 44-51). Note that if the web browser software is distributed to the users that it is inherent that the users receive the web browsing software.

Gerace further discloses processing said software system and said data to produce a controllable window object within a content manifestation environment provided by said web browser (col 5, lines 15-25; col 6, lines 22-40; col 2, lines 3-30);

Art Unit: 3600

dynamically manifesting said content within said controllable window object in accordance with said data (col 5, lines 15-25; col 6, lines 22-40; col 2, lines 3-30).

Gerace further discloses that said windows object being under the direct control of the web browser (col 6, lines 15-21; col 1, lines 44-51).

Gerace further discloses the user utilizing a web browser and web browser software and distributing web browser software (col 6, lines 15-21; col 1, lines 44-51).

Claim 10, 24, 48: Gerace discloses the window object according to claim 9. Gerace further discloses that said content manifestation area is configured to dynamically receive content from at least one advertising content source (Fig. 2; Fig. 3a; col 5, lines 15-25; col 6, lines 22-40; col 2, lines 3-30).

Claim 11, 25, 38, 49, 60: Gerace discloses the window object according to claim 9. Gerace further discloses that said content manifestation area is configured to continuously receive and manifest a content stream (col 13, lines 50-61).

Claim 34-37, 45-47, 56-59: Gerace discloses the system according to claim 32. Gerace further discloses that said content source includes full motion video content, an audio feed (col 3, lines 5-10).

Gerace further discloses that said electronic data network is the Internet (col 3, lines 47-54).

Claim 12, 13, 26-31, 33, 39-42, 44, 50-53, 55, 61-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerace (5,848,396).

Claim 12, 26: Gerace discloses the window object according to claim 9.

Gerace does not explicitly disclose that said content manifestation area is moveable and draggable within a content manifestation environment provided by a WWW browser.

However, Gerace discloses that said content manifestation area is moveable within a content manifestation environment provided by a WWW browser and that the position or placement of content screens can be modified (col 6, lines 30-40; col 11, lines 50-55).

Gerace further discloses utilizing sections in a screen view (col 2, lines 25-30; col 13, lines 50-61) and the utilization of a web browser (col 1, lines 44-51).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that a content area can be moved by being dragged. One would have been motivated to do this in order to provide a standard positional control option when utilizing a web browser environment.

Claim 13, 27-31, 33, 39-42, 44, 50-53, 55, 61-64: Gerace discloses the controllable window object according to claim 9, 23.

Gerace further discloses that said content manifestation area corresponds to a section of a screen within a content manifestation environment provided by a WWW browser client (col 6, lines 30-40; col 11, lines 50-55; col 2, lines 25-30; col 13, lines 50-61), wherein said control facility permits said content manifestation area to be re-sized or closed (col 11, lines 53-55).

Gerace further discloses control over size and placement of said controllable window object (col 3, lines 5-10; col 2, lines 24-28; col 6, lines 30-40; col 11, lines 50-55). Note that since Gerace has control over the size of different advertisements he also has control over the size of the screen that is utilized in presenting that advertisement.

Gerace does not explicitly disclose that the content manifestation area can be maximized or minimized.

Art Unit: 3600

However, Gerace discloses customization of screen format (col 11, lines 24-27), customization of screen positioning (col 11, lines 50-54) and customization of screen section sizes (col 6, lines 30-40). Gerace further discloses small screen options which can be clicked to expand into large screen options (col 13, lines 50-61). Gerace further discloses the utilization of a web browser (col 1, lines 44-51).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add maximizing or minimizing to Gerace' customizable screen interface. One would have been motivated to do this in order to provide further flexible display options.

(10) Response to Argument

Examiner notes that the combination of the prior art renders obvious the features of the Appellant's independent claim 9.

In reference to independent claim 9, the combination of the prior art renders obvious:
a content manifestation area configured to dynamically manifest advertising content received from an advertising content source via an electronic data network (Gerace, claim 18; col 20, lines 19-25; col 3, lines 4-10; col 2, lines 60-65).

And, the preceding is apparent in light of the rejection above.

On page 9 of the Appellant's Appeal Brief dated 1/14/2008, Appellant discusses the 35 USC 112 rejection of claim 32. Examiner responds that the 35 USC 112 rejection of claim 32 has been dropped as the issues regarding claim 32 have been resolved. Also, Examiner notes that a full 35 USC 102 rejection was made of claim 32 and its features in the Final Rejection dated 10/4/2006.

On page 12, the Appellant states, "Nevertheless, Gerace does not disclose or suggest that the content manifestation area dynamically manifest/displays the advertising content to the user, and the Appellant respectfully submits that the content manifestation area statically manifest/displays the advertising content to the user."

Examiner notes that all the Appellant's arguments concerning the independent and dependent claims focus on the issue of whether Gerace discloses dynamically manifesting/displaying the advertising content to the user.

Examiner notes that it is the Applicant's claims as stated in the Applicant's claims that are being rejected with the prior art. Also, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). And, Examiner notes that claims are given their broadest reasonable construction. See *In re Hyatt*, 211 F.3d 1367, 54 USPQ2d 1664 (Fed. Cir. 2000).

And, Applicant's claims minimally state the features concerning "dynamically". Also, the Applicant's Specification describes "dynamic" or "dynamically" in several ways as follows:

"[0007] Despite their widespread use as tools to drive electronic commerce on the Internet and WWW, banner ads and other similar advertising and marketing

Art Unit: 3600

mechanisms are not without their problems. For example, in addition to the fact that banner ads are statically displayed once loaded by a web browser, banner ads and other similar marketing tools do not allow different and dynamic marketing content to be displayed within a browser window. That is, a banner ad usually contains mere graphic image(s) (e.g., one that may contain animated graphics) which is associated with a single hypertext link ("hyperlink"). Such a banner ad cannot dynamically display content such as marketing and advertising content that is to be received via a network connection after an initial container web site page load.

[0008] Furthermore, in addition to the technical infirmities associated with modern banner ads, the same do not facilitate dynamic, rich advertising that network users have become used to in other media forums and which can deliver the most "bang for the buck" in terms of providing the highest possible sales return related to a particular marketing and promotion investment. For example, current banner ads do not come close to the richness of television or radio advertisements that allow full motion video, audio, etc. Accordingly, although network bandwidth capabilities do not currently allow the push of content like television ads, that same bandwidth is not being effectively deployed to facilitate richer, more effective network advertising.

[0021] Content is any form of digital data stream that may be supplied or sent to a computing system such as a personal computer. In the context of the present invention, content includes advertising information that may take the form of a data stream of video, audio, etc. Any media format that may be used to deliver active, dynamic content to a computer screen and other peripheral devices (e.g., sound systems, etc.) may be considered content in the context of the present invention.

[0035] The terms "dynamic manifestation" and "dynamic display" refer to the rendition of content such as advertising and marketing content received via an electronic data network such as the Internet and WWW within a window module provided in accordance with the present invention. For example, dynamic manifestation includes the display of a full motion video stream received from an ad content source (VRL) within a window module in accordance with the present invention.

[0045] As the present invention now provides a dynamic web based advertising vehicle that is different from the use of conventional banner advertisements, a whole new way of generating advertising revenue is realized. That is, in contrast to conventional banner advertisement revenue paradigms that call for cost per impression pricing, the present invention and its provision of a

Art Unit: 3600

dynamic advertising content window now allow for the generation of advertising revenue according to paradigms used for television and other media forums. For example, advertisers who would normally pay for banner advertisement impressions may now place ads that are rich in content and that exist for periods of time much like television commercials and the like. Accordingly, advertising and marketing firms may now derive advertising revenue for "air time" of particular dynamic content advertisements."

Hence, Applicant's 'dynamic' or 'dynamically' can be interpreted broadly or in several ways. Appellant's paragraph [7] above describes dynamic to be varying such that a variety of different ads are placed before the user. Appellant's paragraph [8] and [35] describe dynamic to be related to multimedia type content. Appellant's paragraph [21] describes dynamic to be related to streaming type content. Appellant's paragraph [45] describes dynamic to be related to the ability to schedule ads at specific periods of time. Also, Examiner notes that the independent claims do not specify which interpretation of dynamic is to be read into the claims. Hence, the term "dynamic" or "dynamically" can be interpreted in light of the varying definitions of dynamic found in the Applicant's Specification and discussed in this paragraph. Hence, Applicant's 'dynamic' or 'dynamically' can be interpreted broadly or in several ways.

And, Gerace anticipates dynamically manifesting/displaying the advertising content to the user:

"(19) The Sponsor Object categorizes advertisement or other sponsor provided information according to content and presentation, including colors used, size, shape, and whether audio and/or video components are involved. An advertiser profile building routine automates the process of identifying colors, size, shape, and whether video and/or audio are involved (col 3, lines 4-10);

(13) With respect to the advertisement module 75, program controller 79 obtains sponsor submitted advertisements from module 75 and generates a screen view formatted according to user preferences as determined from the psychographic profile in the user profiling member 73. That is, program

Art Unit: 3600

controller 79 enables display of advertisements customized to the user, as to content and presentation (i.e., colors used, orientation on the screen, audio/video components, and the like). Program controller 79 obtains the content from the advertisement module 75 and the presentation details for the subject user from the user profiling member 73 (col 5, lines 15-26);

(53) Each ad forms a corresponding Ad Object 33d as illustrated in FIG. 5d. For a given advertisement, Ad Object 33d indicates to which series the advertisement belongs. To effectuate this, the Ad Object 33d indicates a series ID which references an Ad Series Object 33c, and indicates a series sequence (i.e., the ordering of the ads in a series). Ad Object 33d also includes the starting and ending time for display of the ad each day. Ad Object 33d also provides references to graphic, sound, and multimedia portions of an advertisement. A text-only format of an advertisement is used for users receiving messages on their own E-mail service or on a text-only browser (e.g., Links systems for VAX/VMS operating systems) rather than through the messaging feature of program 31 (col 12, lines 42-56; also see column 12, lines 23-42);

(62) Preferably the Home Page 43 (FIG. 4a) is an HTML (HyperText) document generated through the set of Page Objects 35a,b,c. The Home Page 43 describes to new users the data available at the program 31 Website and allows existing users to log in. The Home Page 43 is formed of several graphical and text documents in the HTML and Java formats. For example, behind the "stock data" menu selection a Stock Exchange ticker flashes, and behind the "weather" option, a display of clouds swirling over San Francisco and then sunshine over Washington, D.C. is shown. A clip of a newly released movie plays behind the "Media Schedule" option, and sports scores scroll behind the "Sports" option. At the bottom of the screen view are login fields and prompts (col 13, lines 47-61);

(69) Simultaneously main routine 39 updates User Action History Object 37e to reflect the user's selection of the "quick quotation" option. User Viewing History Object 37f notes that the user selected an option which had stock data present in blue, for example, with moving graphical elements (col 14, lines 60-65);

(87) To ensure that sponsors achieve the optimal result from the ads they place, program 31 combines regression analysis with the above weighting technique to achieve real-time, automatic optimization as discussed previously. Under this auto-targeting system, an ad package is shown to general users. After a large number (e.g., 10,000) hits, program 31 runs a regression on a subject Ad Package Object 33b to see what characteristics are important, and

Art Unit: 3600

who (type of user profile) the ad appeals to most (col 18, lines 10-20);

(98) With respect to reporting, if the reports of program 31 show that customers respond to still advertisements more often than moving ones, bright colors more often than darker ones, graphics rather than text, large text rather than small, detailed text or square advertisements rather than bar style ones, such is relayed to the sponsors/advertisers (col 20, lines 19-25);

[Claim] 17. Method as claimed in claim 16 wherein the step of transmitting and displaying includes displaying agate information in predefined schedules to coordinate with at least one of television and radio broadcast of events generating the agate information.

[Claim] 18. Method as claimed in claim 16 wherein the step of displaying agate information further includes updating of the information, in real-time of the events generating the agate information, in a manner such that the agate information is viewable alongside television viewing of said events”.

Also, note that Gerace discloses that agate information can include content information and/or advertising information:

“(18) In accordance with another aspect of the present invention, there are Agate Objects for providing the agate information and a Sponsor Object. In a preferred embodiment, the agate information includes stock information, advertisements, sports statistics, weather reports and the like” (col 2, lines 60-65).

Hence, any of the features in Gerace that apply to agate information also apply to advertising information.

Also, as noted with the citations from Gerace preceding, Gerace’s paragraph and claims (claims 17, 18; col 12, lines 42-56; col 12, lines 23-42; col 5, lines 15-26) above describe dynamic to be varying such that a variety of different ads are placed before the user. Gerace’s paragraph and claims (col 3, lines 4-10; col 5, lines 15-26; col 20, lines 19-25; claims 17, 18) describe dynamic to be multimedia type content. Gerace’s paragraph and claims (col 13, lines

Art Unit: 3600

47-61; col 14, lines 60-65; claims 17, 18) describes dynamic to be streaming type content.

Gerace's paragraph and claims (col 12, lines 42-56; col 12, lines 23-42; claims 17, 18; col 20, lines 19-25) describes dynamic to be related to the ability to schedule ads at specific periods of time.

Hence, Gerace anticipates dynamically manifesting/displaying the advertising content to the user. And, Gerace anticipates dynamically manifesting/displaying where dynamic is understood to be that a variety of different ads are placed before the user; and/or, dynamic is understood to be multimedia type content; and/or, dynamic is understood to be streaming type content; and/or, dynamic is understood to be related to the ability to schedule ads at specific periods of time.

Again, Examiner notes that the word dynamic in the Applicant's claims can be interpreted in light of any of the descriptions of dynamic above from the Applicant's Specification since the Applicant's claim did not further limit how dynamic is to be characterized. And, Gerace discloses any or all of the interpretations of dynamic above.

Therefore, Gerace discloses that the content manifestation area dynamically manifesting/displaying the advertising content to the user.

Hence, Gerace anticipates the features of the Appellant's claims.

Art Unit: 3600

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Arthur Duran/

Primary Examiner, Art Unit 3622

2/20/2007

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